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626 Such a fear, together with public opinion, took care of many
681 minor offenses which other societies deal with by law and even of some major ones. For the other major offenses, there were various methods of discipline: admonition by the authorities, banishment; supernatural vengeance, and, finally, whipping. We may trace, in the acts catalogued as misdemeanors and in their punishment, two attitudes, the aboriginal and the acculturated, overlapping and combining in various ways.

674 From the aboriginal point of view, the major offenses against
681 society were incest (which meant connections with any known relative); the failure of a woman to segregate herself at menstruation or childbirth, and the practise of sorcery. Any of these were thought to bring calamity upon the whole community and if whipping had been a Papago institution, we should expect these to be the first to merit it. However, whipping was rarely mentioned in this connection and the usual punishments were not meted out by man at all but
684 by the supernatural. Families who knew that any of their members were about to commit incest or had done so, dealt with them by moral suasion and, if that failed, took them to the Keeper of the Meeting or the governor. If they still refused to separate, the only punishment was to force them to leave the family group. This was a serious economic misfortune and might be considered a punishment though it was done only to avoid calamity for the family. The offenders were certain to be struck with illness or misfortune by supernatural means.

688 The woman who did not segregate herself brought on her community the danger of flood or lightning and therefore her relatives, and particularly her parents saw to it that she did her duty. If she deceived them, calamity could be averted by her confession and then she was not punished for confession removed the evil influence. But if she did not confess, a supernatural doom would overtake her and some or all of her connections.

683 The sorcerer was treated in an entirely different way: his was the one case where the Papago performed an official execution. It is possible that sorcery was more frequent than other lapses for the Spanish records are full of it, and one Spanish priest is even said to have died of it. But certainly, vengeance in this case was not left to the supernatural though any good shaman was welcome to try and kill the evil one. But when the latter had proved himself a public menace by the number of deaths he was thought to have caused, the council would decree his death and send some young man out with a club to despatch him. Or the villagers all together might lynch him, or several do the work on their own initiative and

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684 could but return to her family. However, sexual offenses were a
837 point where the native and Christian points of view overlapped. Adultery, in the eyes of the Church, was a cardinal sin, and in villages where missionary influence was felt, both male and female adulterers were punished at the whipping post.

685 The chief native offenses against property (if we except the stealing of a wife) were theft, the moving of land boundaries, and food hoarding. Theft was a rare occurrence, since all had about the same amount of possessions and since families shared even with their laziest members. In old days, it was dealt with by the Keeper, who asked the offender's family to make restitution. Public opinion forced them to comply or lose their status in the community. The moving of land boundaries was dealt with in the same way. The two landholders concerned were summoned before the Keeper by his Leg and urged to come to an agreement. Sometimes the Keeper would suggest that they should divide the land under dispute and each find an extra plot further off. The hearing usually took place before all the elders and both were ashamed to show themselves quarrelsome; so they accepted the decision. If one were recalcitrant without good cause, the council might ask him to leave the village. Food hoarding was recognized by all as a serious offense, but it was not punished. The offender was simply recognized as a public enemy and avoided to such an extent that he and his family suffered economically from lack of help and socially from loneliness and humiliation.

681 This seems to sum up the offenses and the discipline of pre-Spanish days. The community and officials acted principally as umpires and used no corporal punishment except in the killing of the shaman which was regarded as an act of self defense. The punishments of admonition and banishment which they did administer, fell, not upon the individual offender but on his whole family. It has been mentioned above that a family, particularly a father and brothers, would not desert a man no matter what his behavior. If they could not reform him, they might, themselves, take him to the authorities for a severe lecture on the fact that he was ruining his family's position. They might share in this lecture for having failed to keep him in order. If he was so impossible that he must be asked to leave the village one or more of the family would have to go with him — since an individual could hardly exist alone, — or distant relatives must take him in. In any case, there was no thought of the penalty singling out the individual and leaving the family free. With supernatural vengeance, this was particularly true for misfortune might strike any member of the family and not necessarily the culprit.

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In Spanish days, however, it was the individual who was punished and usually by whipping. It is hard to be positive that whipping is a foreign institution yet it seems likely since the Papago are chary of physical contact especially in public. This may seem surprising in a society where ten or more people could live and sleep in a one-room house, but one may conjecture that it is an avoidance generated by that very fact. They maneuver without touching one another where Europeans, who have more privacy, are continually doing so. They did not, anciently, slap or whip children. It is to be expected that a people with this attitude would object to corporal punishment, particularly when they have cultivated such a violent sensitiveness and openness to humiliation. The missionaries, on the contrary, whipped their neophytes as they would whip the children they considered them to be. That the Papago should have been willing to adopt this system is the surprising thing. We may lay it to the extreme prestige of these givers of wheat and horses, and also to the fact that the native selected to dispense whipping felt himself raised to the supernatural power of the priests. Certainly the institution of whipping grew, from the eight stripes delivered by the *alcalde* for drunkeness or absence from mass to a standardized penalty for all misdemeanors, sometimes including murder. Those which were mentioned as always whipped fall under the heading of sins in the Christian sense. A list of these offenses and their penalties follow:

Murder: The chief would have the murderer whipped and force him to make restitution in property.

Adultery: Both offenders whipped and the wife sent back to her husband.

Quarrels between spouses: Either a wife or a husband might complain of the other's laziness, cruelty or light conduct and have the offender whipped.

Disobedience of children: Parents might complain of laziness or light conduct, particularly in a daughter, or of her disobedience in not taking a husband. Some cases are reported where the chief felt that the parents had been in the wrong and had them whipped instead of the child.

Slander: All reports of misconduct were investigated and if, they proved untrue, those who had spread the rumor were whipped, whether male or female.

There follows a provision heard from only one informant and showing an interesting combination of the old and the new systems.

> If a father failed to have the puberty ceremony for his daughter at the proper time, he should be whipped. If he proved that he had not been told, the mother was punished instead. (26)

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681 Whipping was ordered by the Spanish appointed governor who held his court with some little ceremony. On receiving a complaint, he sent his Leg out to bring in the offender whom he received in front of his house, generally with some elders present as advisors. If the offense was acknowledged, he announced the penalty immediately and the Leg carried it out. But if the plea was not guilty, he sent the Leg for witnesses and asked each of them, "What do you know about this?" He made up his mind after hearing their stories and consulting the elders. However, the Papago are not a people given to formality and the following instances, remembered by the daughter of the governor of Kuitatk reflect a neighborliness not perhaps contemplated by the Laws of the Kingdoms of the Indies.

684 Once a wife came, very angry, to complain about her husband. "He beats me," she said, "but I love him." My father sent his Leg for the husband. He said to that man: "Do you beat her?" he said. "Yes," said that man. "I beat her because I am jealous. I think she looks at other men. But I want to keep her." "Then," said the woman, "let him pay me with his body. Let him be beaten too." My father thought about that and he said, "Very well. How many stripes?" "Fifty." "Do you want to kill him?" said my father. "Twenty." So the man took off his shirt and knelt down and the Leg beat him.

A man came with his daughter. "She went off into the arroyo with a man at the last girl's puberty dance. I want her beaten." "How many stripes?" "Twenty." "Fifteen," said the chief. "She is young."

Then a husband and wife came with their girl who had just been married. "She will not sleep with the man to whom we gave her." That man was an old man but he was all right. My father (the chief) knew that. He knew the girl was just scared. He said, "Well, we'll beat her and see how she feels." So they tied the girl's hands to the post. She began to cry. She said, "I'll go with him." So she went off with her husband and my father said to the parents," If she doesn't behave, bring her back." (26)

178 692 The governor's whipping post lasted on during the early years of American authority in Papagueria, before the reservations were organized. With the latter event came the appointment of Indian judges, Indian policemen paid by the government and a reservation jail. These deal with minor offenses, principal of which is the old one first turned over to the *alcalde*—drunkenness. This neurosis of a transition stage is at present far more frequent than offenses against property or morals. However, the Indians show a tendency

3: Underhill E-5 (1931-1935) 1936
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So he talked to them, and then they spoke of whether they would widen the ditches and if the boys were practising well for the races, and maybe a man from some other village was there to tell them the news. There was not a man among us who would miss that meeting. 159x 517 721

We women sat in the dark, under the shelter, and told about the strange things we had heard. We told how there is a root which men carry to make the deer come to them and it makes women come, too. It smells strong and sweet, and you can smell it on the sweaty hands of a man beside you in the dance. If it is very strong and has been used in many love matches, sometimes it turns into a man. It walks up beside a woman while she is sleeping and makes her dream. 159x 517 [732]

We told how, in our village, a girl was struck by lightning. Someone must have been menstruating and not have confessed it, said the medicine man. So he called all the girls, took out his crystals and looked at them. "It was the girl herself," he said. "She has killed herself." 159x 761 821

We told how, when a woman does not seem to care for any man or a man for any woman, that person is really married to a snake. There was a man in our village who used to go out alone into the desert and disappear in a wash. His parents followed him and found there a little red snake with her baby snakes on her back. They said to their son: "What! have you a family of snakes?" He said: "No, she is a beautiful woman." That is how snakes fool you. The older women used to tell us, too, that if we thought too much about any boy before we were married, that boy would seem to come and make love to us. But it would not be he, it would only be a snake. So girls must not think too much about boys. That was what the old women told us. We must not think about boys and we must not talk to boys. When we were married it would be time enough to speak to a man. Now it was better to work and be industrious. 159x 234 864

So I worked. But I used to think while I was sitting under the shelter with my basketry, about whether I would get a good man and whether I would like being married. I used to hear a good deal about married peoples' troubles, because my father was chief in Mesquite Root. Married people who had quarrels brought their troubles to him. There was a post in front of our house where people were beaten who did wrong, and all the village would come to see and talk about what happened. 159x 622 681

Once I remember how a wife came, very angry. She had walked a long way to tell about her husband. "He beats me," she said to my father. "You who are One Made Big Over Us, he beats me! But I love him." My father used to smile at things like that. He was a warrior and a gambler. He did not care about beating women. But he always settled things for them. So 159x 684

4: Joseph et al D, E-5 (1942-1943) 1949
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be rushed or pushed into action. If these qualities are respected by government representatives, they are more likely to gain the support and active participation of the council in their common responsibility—the welfare of the Papago.

THE TRIBAL COURT

Off the reservation Indians are subject to state and local law. On their reservations they are subject to federal law in regard to ten major crimes: murder, manslaughter, rape, assault with intent to kill, assault with a dangerous weapon, arson, burglary, larceny, incest, and robbery. All other offenses are dealt with according to the tribal law.[9]

The Papago code of law and order, drawn up by a committee of the tribal council,[10] is in the main a codification of the old laws and customs of the people. However, it includes several white innovations such as the requirement of a marriage license and ceremony and provision for probating estates and appointing guardians.

On the Papago reservations law is administered by a tribal court and Indian police. The tribal court is presided over by Indian judges whose appointment by the superintendent must be approved by the tribal council. The constitution provides for three judges in all, but at the time of this study there was only one on the main Reservation and one at San Xavier.

As noted in chapter iv, many difficulties which might come to court are settled within the family without recourse to law, or are taken to the village court. Since the Papago are a law-abiding people, not many cases come up for trial. In one year only 116 were on record, the majority cases of drunkenness. The usual sentence is a number of days in jail. The normal Papago does not like such a sentence, for he does not like to have "people talk," as they do when someone is behind bars. Thus the diffuse sanctions of public opinion are important in maintaining the legal sanctions.

Indian judges and police are not in a particularly happy position. Several past incumbents criticized for favoring kinsmen or people of their own religious denomination resigned. At the time of this study, one of the judges nominally a Presbyterian apparently was not accused of partiality.

DISTRICT COUNCILS AND COURTS

According to the tribal constitution, the district is the basic unit of government, with an elected council and a court. Actually, however, as indicated in preceding sections, this white pattern of government has not really taken root

9. Or, in the absence of such a code, according to a code of laws for Indians embodied in U.S. Code, Title 25.

10. Approved 1945.